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OFFICE OF THE
EXECUTIVE SECRETARY

March 1, 2001

VIA HAND DELIVERY

Mr. K. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

**Re: Amendment to the Application of Memphis Networx, LLC for
a Certificate of Public Convenience and Necessity to Provide
Intrastate Telecommunications Services and Joint Petition of
Memphis Light, Gas and Water Division, a Division of the
City of Memphis, Tennessee ("MLGW") and A&L Networks -
Tennessee, LLC ("A&L") for Approval of Agreement Between
MLGW and A&L Regarding Joint Ownership of
Memphis Networx, LLC
Docket No. 99-00909**

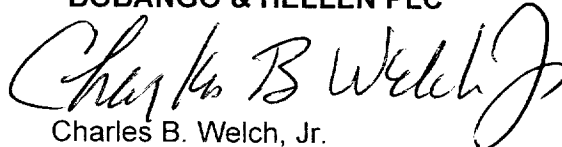
Dear Mr. Waddell:

Enclosed for filing please find the original and thirteen (13) copies of Tennessee Cable Telecommunications Association, and Time Warner Communication of the Mid-South, and Time Warner Telecom of the Mid-South, LLP's Response to Memorandum of Law in Support of Objection of Memphis Networx to the Retention of Evidence, Filings and Arguments of the IBEW in this Proceeding Following the IBEW's Withdrawal from this Proceeding in the above-referenced docket. Copies are being served on parties of record.

If you have any questions, please contact me.

Very truly yours,

**FARRIS MATHEWS BRANAN
BOBANGO & HELLEN PLC**


Charles B. Welch, Jr.

CBW:lw

Enclosures

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE: APPLICATION OF MEMPHIS)	
NETWORK, LLC FOR A CERTIFICATE OF)	
PUBLIC CONVENIENCE AND)	
NECESSITY TO PROVIDE INTRASTATE)	
TELECOMMUNICATIONS SERVICES)	
AND JOINT PETITION OF MEMPHIS)	DOCKET NO. 99-00909
LIGHT GAS AND WATER DIVISION,)	
A DIVISION OF THE CITY OF MEMPHIS,)	
TENNESSEE ("MLGW") AND A&L)	
NETWORKS-TENNESSEE, LLC ("A&L"))	
FOR APPROVAL OF AGREEMENT BETWEEN)	
MLGW AND A&L REGARDING JOINT)	
OWNERSHIP OF MEMPHIS, NETWORK, LLC.)	

**RESPONSE TO MEMORANDUM OF LAW IN SUPPORT OF
OBJECTION OF MEMPHIS NETWORK, LLC, MLGW AND
MEMPHIS BROADBAND, LLC, TO THE RETENTION OF EVIDENCE,
FILINGS AND ARGUMENTS OF THE IBEW IN THIS
PROCEEDING FOLLOWING THE IBEW'S WITHDRAWAL
FROM THIS PROCEEDING**

COME NOW Time Warner Telecom of the Mid-South, L.P. ("Time Warner Telecom"), Time Warner Communications of the Mid-South ("Time Warner Communications") and the Tennessee Cable Telecommunications Association ("TCTA") (collectively "the Intervenor") and respond to the Memorandum of Law in Support of Objection of Memphis Network, LLC, MLGW and Memphis Broadband, LLC, to the Retention of Evidence, Filings and Arguments of the IBEW in this Proceeding Following the IBEW's Withdrawal from this Proceeding. The Intervenor maintain that the Memorandum presents no reasons for the Pre-Hearing Officer to reconsider his ruling in a February 9, 2001 Order that the post-hearing brief filed by the International Brotherhood of Electrical Workers, Local 1228 ("IBEW") and the evidence presented by

or elicited from the IBEW and its witnesses would remain a part of the record in this proceeding.

ARGUMENT

Memphis Networx, LLC (“Applicant”) and Joint Petitioners Memphis Light, Gas & Water Division (“MLGW”) and Memphis Broadband, LLC (“Memphis Broadband”) (collectively “Applicant and Joint Petitioners”) cite absolutely no valid reason why the TRA should not allow the post-hearing brief filed by the IBEW and evidence presented by or elicited from the IBEW and its witnesses to remain a part of the record in this matter. The only argument Applicant and Joint Petitioners make is the allegation that the withdrawal of the appearance of a party defendant leaves the case in the same condition as if the appearance had not been entered. However true this may be, it has no application to the matter at hand.

In this case the IBEW, an intervenor, has withdrawn from the proceedings. The TRA has ordered that the IBEW's post-hearing brief and evidence by and from the IBEW's witnesses will remain in the record. Applicant and Joint Petitioners cite only case law decided prior to the adoption of the Tennessee Rules of Civil Procedure and prior to the rules set forth by the TRA for the argument that all pleadings and testimony related to the IBEW be somehow “withdrawn” from the record. In Sawyer v. Sawyer, 152 N.W.2d 605 (Iowa 1967), cited by Applicant and Joint Petitioners, the court stated that “[t]he withdrawal of appearance by an attorney does not have the effect of withdrawing his client’s appearance or pleadings filed in the latter’s behalf.” 152 N.W.2d at 608 (emphasis added) (citations omitted). This “rule” is based on the common sense proposition that an attorney’s withdrawal from a case should not affect his or her client’s

position. An attorney has not withdrawn as counsel in this case, but, rather, an intervenor has moved, and been granted permission by the TRA, to withdraw from the proceedings. Applicant and Joint Petitioners apparently rely on a passage from the Sawyer opinion that reads: “. . . an authorized or otherwise rightful withdrawal of the appearance of a party defendant leaves the case in the same condition as if the appearance had never been entered and operates as a withdrawal of defendant's pleadings.” 152 N.W.2d at 608 (emphasis added). This “statement of law” has no application to the matter at hand. If the statement from Sawyer makes any judicial sense, it is only in the context of a defendant withdrawing from a case. Of course a defendant withdrawing will leave a court with nothing to decide. It would be as if there was no answer because the party defending the suit has chosen to withdraw. Applicant and Joint Petitioners recognize this when they quote an 1877 Indiana Supreme Court case which stated that “[w]ithout an appearance, a party cannot answer in a cause.” Smith v. Foster, 59 Ind. 595, 596-97 (1877) (emphasis added).

In this case, a party was allowed to intervene and then allowed to withdraw. There is absolutely no authority for the proposition that the TRA should in some way strike from the record or disregard all evidence and filings put forth by the IBEW. As stated above, the extremely dated authority cited by Applicant and Joint Petitioners is limited in whatever applicability it has to party defendants who withdraw, not to intervening parties.

Rule 402 of the Tennessee Rules of Evidence provides that relevant evidence is admissible. Tenn. R. Evid. 402. Evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or

misleading the jury or by consideration of delay, waste of time, or needless presentation of cumulative evidence. Tenn. R. Evid. 403. Applicant and Joint Petitioners make no argument that the evidence in the record put forth by IBEW and part of the record is in any way irrelevant or prejudicial, confusing or misleading. In fact, they set forth no reason, other than statements from pre-rules cases which do not apply to intervening parties, for why they seek to purge the record of the IBEW's filing and evidence.

Practically speaking, there is no way to purge the record in this case of every pleading filed or evidence presented or testimony elicited by the IBEW without leaving a record which does not reflect the complete history of this proceeding. The TRA may have ruled on a motion by Applicant and Joint Petitioners or the Intervenor and drawn a conclusion based upon the testimony of an IBEW witness or an argument or fact set forth in an IBEW pleading. Other parties have developed trial strategy based upon the IBEW's participation in this proceeding and may have introduced evidence through an IBEW witness that has not been introduced before or elicited information on cross-examination from an IBEW witness that remains relevant.

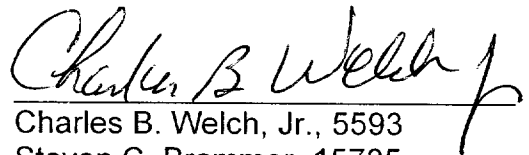
There is no rule of law requiring the TRA to purge the record of any of the IBEW's filings, pleadings or witness testimony simply because it withdrew from this proceeding. The testimony and exhibits presented by the IBEW and its counsel have been received into evidence by the TRA during a hearing in which the evidence was closed. The fact that the IBEW has now withdrawn does not make the testimony or exhibits any less relevant than when they were accepted into evidence. To allow such withdrawal now would be highly prejudicial to the Intervenor and to the manner in which this case has been presented. The IBEW's pleadings, exhibits, and witness

testimony were a part of the case at the time and remain a part of this record of the proceeding.

Applicant and Joint Petitioners' objections are unfounded in a motion of this sort. There is simply no authority for now excluding the filings, pleadings and witness testimony of an intervening party which has withdrawn as part of the record when such evidence remains relevant to the issues before the TRA.

Respectfully submitted,

**FARRIS MATHEWS BRANAN
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By: 

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing on the parties listed below by placing same in U.S. Mail, postage prepaid, this the 1st day of March, 2001.

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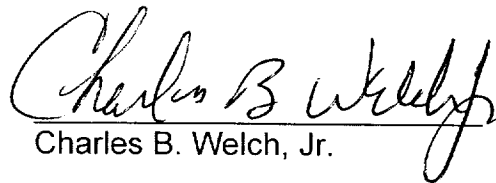
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